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WORKERS' COMPENSATION

Action Needed to Reduce Payment Errors in SSA Disability and Other Programs

GAO

Accountability * Integrity * Reliability

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Abbreviations

DI	Social Security Disability Insurance
EVS	Employee Validation Service
HCFA	Health Care Financing Administration
HUD	Department of Housing and Urban Development
OIG	Social Security Administration's Office of Inspector General
OQA	Social Security Administration's Office of Quality Assurance and Performance Assessment
SSA	Social Security Administration
SSI	Supplemental Security Income
SSN	Social Security number
USDA	Department of Agriculture
WC	workers' compensation

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United States General Accounting Office
Washington, DC 20548

May 4, 2001

The Honorable Charles E. Grassley
Chairman
The Honorable Max Baucus
Ranking Member
Committee on Finance
United States Senate

The Honorable William M. Thomas
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Between 1991 and 1998, workers received an average of about $43 billion each year in cash and medical benefits through the nation's workers' compensation (WC) programs to cover work-related injuries.[1] WC beneficiaries may also be eligible for federal program benefits, such as Social Security Disability Insurance (DI) and Supplemental Security Income (SSI).[2] In such programs, the law often limits access or reduces benefits for those receiving workers' compensation. For example, if a person receives both DI and WC benefits, and together these benefits exceed 80 percent of the injured worker's average current earnings, the Social Security Administration (SSA) generally reduces the DI benefit. This reduction in benefits is referred to as the WC offset. Over the years, evaluations by GAO, SSA, and SSA's Office of Inspector General (OIG) have found significant overpayment and underpayment errors related to the WC offset provision. Because these payment error problems are long-

[1]All states have enacted WC laws requiring employers to provide various cash and medical benefits to their injured workers. The federal government also has established its own WC program to cover federal employees. In addition, the federal government administers WC benefits paid to coal miners suffering from black lung and oversees WC payments available to longshoremen and harbor workers.

[2]The DI program provides benefits to fully insured persons who are unable to work because of a physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. SSI provides monthly cash payments to aged, blind, or disabled persons whose countable income and assets are below program limits.

standing, we undertook a review—under our own statutory authority—to determine how benefit programs administered by SSA and other agencies are affected by WC benefits. This report (1) examines the effect of WC benefits on SSA programs, focusing on SSA's progress in administering the WC offset provision; (2) discusses other federal programs whose benefit payments are also affected by WC benefits; and (3) discusses options for addressing federal benefit payment errors related to workers' compensation.

To examine how WC benefits affect SSA's administration of its disability programs, we reviewed laws and regulations pertaining to the DI and SSI programs; interviewed program administrators; and met with administrators of several state WC programs, attorneys for WC beneficiaries and insurers, and representatives from trade associations of WC insurance companies and self-insured employers. We also compared WC records from Virginia (which maintained a central database for state WC cases and provided us access to its records) with SSA beneficiary records to identify persons receiving both DI and WC benefits and to determine how frequently such situations are reported to SSA.

To examine how WC benefits affect other federal programs, we focused our analysis on Medicare, which is administered by the Health Care Financing Administration (HCFA). We chose Medicare because it covers medical expenses for persons who have received DI benefits for 2 years and because WC insurers are supposed to be the primary payer and Medicare the secondary payer of medical expenses that arise from work-related injuries and are covered under a WC program. We examined HCFA's rules and regulations related to its role as a secondary payer, met with HCFA staff responsible for the Medicare program, and used the Virginia WC data to identify beneficiaries receiving Medicare benefits. We also examined regulations and practices followed by several other federal programs to examine how WC benefits affect other programs. These programs included the Department of Agriculture's (USDA) Food Stamp program, the Department of Housing and Urban Development's (HUD) Section 8 Rental Voucher and Certificate programs, and child support enforcement activities.

We conducted our work between March 2000 and March 2001. We did not independently verify the accuracy of the automated data provided by state WC agencies; with this exception, our work was performed in accordance with generally accepted government auditing standards. Appendix I further describes the scope and methods of our work.

Results in Brief

SSA's administration of the WC offset provision continues to be undermined by the lack of reliable information identifying the receipt of WC benefits by DI beneficiaries, causing some beneficiaries to be overpaid and others to be underpaid. No national reporting system identifies WC beneficiaries. Instead, SSA largely relies on applicants and beneficiaries to report their receipt of WC benefits and any changes that occur in the benefit amounts—an approach that makes it very difficult for SSA to make accurate benefit payments. Ongoing SSA reviews of benefit payments indicate that more than 50 percent of DI beneficiaries whose benefits are being offset have been paid inaccurately. Another study projected $1.5 billion in payment errors related to the WC offset. About 85 percent of these errors are underpayments of entitled benefits that result when DI beneficiaries do not report reductions in their WC benefits. Our examination of WC files in Virginia, which cannot be projected nationwide, showed that SSA was unaware that about 26 percent of Virginia DI beneficiaries concurrently received WC benefits for some period of time, usually about 1 month. However, among these unrecognized concurrent benefit cases, about 6 percent had received WC benefits for periods of 6 months to 7 years. In addition, SSA policies governing the offset treatment of lump-sum WC payments—which can be received in lieu of a periodic WC benefit payment—do not produce close approximations of the benefit value of the lump-sum payments as called for by the Social Security Act. Rather, they often result in unrealistic approximations of the monthly benefit value of a lump-sum payment, allowing the offset to be legally avoided and thereby increasing DI benefit payments.

Other federal agencies also need WC information to make accurate program benefit payments, and face similar difficulties identifying WC beneficiaries. Like SSA, Medicare relies on its applicants and beneficiaries to self-report WC benefits and is vulnerable to payment errors when they do not. In a group of cases from our Virginia sample of joint Medicare and WC benefit cases that HCFA staff reviewed for us, HCFA was often unaware that beneficiaries were also receiving WC benefits. Among our sample of Virginia cases, we found that about 39 percent of the joint WC and Medicare beneficiaries had received some Medicare benefits for treatments (such as for spine surgery) that were potentially related to the WC injury (for example, those involving back injuries). Although these data are not nationally representative, they show that HCFA faces difficulties similar to SSA in identifying WC beneficiaries. Difficulties identifying WC beneficiaries could extend beyond Medicare. Program regulations for food stamps and Section 8 rental housing assistance consider WC benefits as income or assets, and an inability to obtain

information on such benefits could affect accuracy of benefit payments. Child support enforcement agencies can also use WC beneficiary information to locate missing parents and assets to meet support obligations, but about half the states do not use it.

There are ways to address the difficulty of reliably identifying WC beneficiaries. However, the fragmented structure of WC programs and the lack of federal involvement in state WC programs defy a simple solution. As an initial step, federal agencies could test whether sharing the WC data that each agency has independently developed would benefit the government as a whole. In addition, a more comprehensive method could be developed to better obtain the input of WC insurers. Insurers are the best source of information about beneficiaries because they know to whom, when, and why they are paying benefits, and the amount of such benefits. Collecting pertinent beneficiary information from insurers, on either a voluntary or mandatory basis, would improve the accuracy of federal payments from agencies needing to know about WC benefits. One possible approach would be to encourage WC insurers to participate in a voluntary reporting process. However, WC insurers are concerned about the costs of any reporting process and may need an incentive to cooperate. Moreover, because Medicare is the secondary payer to WC insurers, it may not be in the insurers' economic interests to share their beneficiary data with HCFA. If a viable voluntary reporting process is not feasible, a mandatory reporting process could be established.

This report recommends that SSA and HCFA test the extent to which the sharing of WC beneficiary information with each other, and with other federal programs, would improve the accuracy of federal benefit payments. It also recommends that SSA take several actions to test the viability of a voluntary reporting process with WC insurers and revise its policies governing how the monthly benefit value of a lump-sum payment should be determined for offset purposes. Finally, we note that the Congress may need to consider legislative action to resolve long-standing operational problems that a number of federal agencies face when trying to identify WC beneficiaries.

In commenting on a draft of this report, SSA and HCFA generally supported our recommendation to share information with one another in order to identify recipients of WC benefits. SSA also generally agreed that it needs to improve its administration of the WC offset provisions, including provisions governing lump-sum payments in settlement agreements. However, SSA raised some concerns about implementing the SSA-HCFA data exchange, providing SSN verification services to WC

insurers, and balancing the need for better WC information with privacy issues. SSA was also concerned that obtaining better WC information would likely result in increased administrative expenditures and program costs. We believe that SSA's concerns about data exchanges, verification services, and privacy issues can be addressed. We also believe that protecting program integrity is worth some additional spending. Moreover, since most of the payment errors are underpayments, the additional program expenditures resulting from the correction of these errors would be made to beneficiaries who are currently not receiving the benefits to which they are entitled. SSA also provided a few technical comments, which we incorporated where appropriate. SSA's and HCFA's comments are shown in appendixes II and III.

Background

Workers' compensation consists of a complex array of programs that provide benefits to persons injured while working or who suffer occupational diseases. Each state and the District of Columbia requires employers operating in its jurisdictions to provide WC insurance for their employees and to report work-related injuries to the state WC agency; however, the types of information required varies among the states. Although WC programs exist in all states, the programs are not federally mandated, administered, or regulated. Rather, they evolved throughout the 20th century under state laws with the support of labor and management. They established a mechanism to pay injured workers predictable levels of compensation without delay.

Administrative approaches, benefits, and reporting requirements vary widely across the states' WC programs. Depending on state law, employers may purchase WC insurance through private carriers or state-managed funds, or they may self-insure if they can meet state financial standards.[3] A leading property and casualty trade association estimated that fewer than 5,000 entities (mostly insurance carriers and self-insured employers) provide WC insurance.

WC programs across the states provide similar types of benefits, although specific eligibility requirements and benefit amounts vary widely. Benefits include tax-free cash to replace wages lost while the employee cannot work, coverage of injury-related medical and rehabilitation expenses, and

[3]Most WC coverage (about 70 to 80 percent) is provided either by employers purchasing insurance through private carriers or by self-insurance. In six states, employers must purchase WC insurance through state-managed funds, and in 21 states employers have the option to purchase WC insurance through state funds.

survivor and burial benefits. Under most WC programs, workers must miss a set number of work-days before cash benefits are payable. Cash benefits are usually two-thirds of the employee's weekly earnings at the time of injury and programs have caps on the maximum benefits payable based on average wages in a state.

State WC laws also contain other provisions that affect the payment of cash benefits. Seventeen states provide for cost-of-living adjustments in benefit amounts. Twenty-nine states and the District of Columbia permit insurers to reduce WC cash payments when the beneficiary also receives other types of benefits, such as those from Social Security retirement, survivor, or disability programs or from publicly or privately funded pension plans.

Generally, WC cash benefits are classified into three major categories.[4] Temporary total disability benefits, the most frequently occurring type, are paid during the period when an injured employee is unable to work and are terminated when the injured employee returns to work. Permanent partial disability benefits are paid to compensate workers when they incur some type of permanent impairment that does not preclude a future return to work. These benefits can either be a preestablished amount for specific impairments (loss of eye, hand, toe, etc.) or a defined range of payments over a set period of time if an amount has not been preestablished for a particular impairment. Total permanent disability benefits are paid when employees incur serious permanent impairments that make them unable to return to work. Total permanent benefits are usually payable for the duration of the disability.

WC cash benefits are typically periodic payments. However, most WC programs allow benefits to be paid all at once in a lump sum, a method of payment commonly used to resolve disputes in WC cases involving permanent impairments. The disputes most often arise in permanent partial impairment cases when evidence conflicts about the cause of the injury or opinions differ about whether the injury precludes an employee from returning to work. Rather than face the delays and risks inherent in litigation, insurers and injured employees may choose to compromise and set specific terms in settlement agreements. These agreements commonly

[4]A fourth category is sometimes discussed: temporary partial disability. These benefits can be paid when a worker experiences some continuing wage loss as the result of a work-related injury.

include a lump-sum payment to the injured worker and list future medical and rehabilitation benefits, if any, that the insurer will provide. The amount of the lump sum and the coverage of future medical and rehabilitation expenses are typically less than the WC program would have provided if the employee had prevailed on all the disputed issues through litigation, but more than if the insurer had prevailed on all disputed issues.

The payment of all medical expenses for a work-related injury is a primary benefit provided under WC plans. In contrast to cash benefits, medical benefits are immediately available, and time and monetary limits are rarely imposed on them by state law. Forty-five states, the District of Columbia, Puerto Rico, and the federal government provide full medical benefits, with no time or monetary limitations specified under their WC programs. Some states, however, have established special provisions or requirements that limit medical benefits. For example, Florida requires a $10 copayment for all medical services provided after the worker has reached maximum medical improvement for the impairment. Ohio requires the state WC agency's medical section to examine employees after they have received temporary total disability benefits for 90 days to determine their eligibility for continued compensation and the appropriateness of the medical treatment that has been provided.

Federal programs provide benefits that may be paid to persons also receiving WC benefits. Federal laws can limit access to these benefits when persons also receive workers' compensation. For example, the Social Security DI program provides benefits to insured persons who are unable to perform any substantially gainful activity by reason of any medically determinable physical or mental impairment. In 1999, SSA paid about $51 billion in benefits to 6.5 million disabled workers and their dependents. In 1965, the Congress required SSA to reduce DI benefits, under certain circumstances, for persons also receiving workers' compensation. The reduction can apply even if the DI and WC benefits are for unrelated injuries or illnesses.[5] National data identifying WC beneficiaries do not exist. SSA staff, however, has estimated that 5 percent of disabled workers also receive WC benefits. In Richardson v. Belcher,

[5]The Social Security Act also has an exception to the application of the WC offset. SSA cannot offset disability benefits if the state WC program allows the insurers to reduce the amount of WC benefits they would normally pay to an injured worker when the worker also receives Social Security DI benefits. Originally, this exception was available to all states, but in 1981 the Congress limited recognition of such exceptions to the 14 states that had established them by Feb. 18, 1981.

404 U.S. 78, 83 (1971), the Supreme Court stated that the WC offset provision was intended to provide an incentive for injured employees to return to work because the Congress did not believe it was desirable for injured workers to receive disability benefits that, in combination with their WC benefits, exceeded their preinjury earnings.

SSA's problems administering the WC offset are long-standing and well documented by GAO, SSA's OIG, and SSA's quality assurance office.[6] For example, in 1983 we reported that claimants often do not self-report WC benefits and estimated that unreported benefits had resulted in overpayments amounting to $43 million in fiscal year 1981. Subsequent internal SSA evaluations in 1985 and 1991 examined the cases of DI beneficiaries who had advised SSA that they had pending WC claims. In the 1985 study, the Office of Quality Assurance and Performance Assessment (OQA) noted that 15 percent of the examined cases involved overpayments and estimated that the payment errors amounted to more than $7 million annually because DI beneficiaries did not report their subsequent receipt of WC benefits. In 1991, the OIG estimated that overpayment errors in WC offset cases amounted to $35 million between 1986 and 1988.

SSA Faces Difficulties Administering Disability Payments Involving WC Benefits

The lack of a reliable source of information to identify WC beneficiaries complicates SSA's administration of benefit payments under the DI and the SSI programs. SSA relies heavily on individuals to report their WC benefits and this has caused significant payment errors in the DI program. For years, studies have discussed overpayment problems related to the WC offset provision. More recent studies now show that SSA also underpays persons receiving DI benefits. The situation also makes payments under the SSI program vulnerable to error. In addition, SSA's policies governing the conversion of lump-sum WC payments into a monthly amount permit unrealistically low estimates of the monthly WC benefit foregone by the acceptance of the lump-sum payment, allowing the offset of disability benefits to be avoided.

[6] *Better Case File Monitoring of the Workers' Compensation Offset Provision by the Social Security Administration Could Save Millions* (GAO/HRD-83-90, Sep. 30, 1983); *Workers' Compensation/Public Disability Benefits Verification Study* (SSA Office of Insurance Program Quality, March 11, 1985); *Unreported Workers' Compensation Payments* (SSA OIG, OEI-06-89-00900, Nov. 1991).

Reliance on the Self-Reporting of WC Benefits Makes SSA Payments Vulnerable to Errors

SSA's long-standing problems with administering the WC offset persist today. In addition to overpayments, a 1998 OIG report showed that voluntary reporting of WC benefits also leads to the underpayment of DI benefits.[7] The OIG reported that it had found underpayment and overpayment errors in 82 percent of the 50 WC offset cases it reviewed from a sample of 100 cases, and projected that they totaled about $527 million ($385 million in overpayments and $142 million in underpayments). The most significant payment errors occurred because SSA relied on beneficiaries to file timely reports on the status of their WC benefits. When SSA is unaware of benefit changes, such as the termination of WC benefits, it continues to offset DI benefits at the same rate, resulting in underpayments.

Officials told us that the OIG report prompted OQA to examine another 100 WC offset cases for claims adjudicated between 1985 and 1993. OQA estimated that payment errors occurred in about half of the cases for DI beneficiaries whose benefits were being reduced because they were receiving workers' compensation. Payment errors were estimated to equal $270 million, most of which were underpayments. In a 1999 payment accuracy study, SSA projected that total payment errors related to the WC offset provision amount to $1.5 billion, with underpayments accounting for $1.3 billion of this amount.[8]

In our work, we also examined the potential for payment error by determining how many persons had concurrently received DI and WC benefits and whether SSA knew of the concurrent receipt. We compared WC beneficiary data from Virginia against SSA's DI beneficiary data as of March 2000. We found that of 3,881 individuals from Virginia who had concurrently received WC and DI benefits, SSA was not aware of the concurrent receipt for about 26 percent (1,012) of these individuals. In over 90 percent of the 1,012 cases, the period of concurrent receipt was limited—up to 1 month—so any overpayment was probably small. However, in 6 percent (63) of the cases, SSA records reflected individuals'

[7] *Effects of State Awarded Workers' Compensation Payments on Social Security Benefits* (SSA OIG, A-04-96-61013, Sep. 1998).

[8] *SSA Title II Stewardship Report,* SSA Office of Quality Assurance and Performance Assessment (Oct. 1999).

receiving concurrent WC and DI benefits for periods ranging from 6 months to 7 years.[9] Table 1 summarizes the results of our comparison.

Table 1: Concurrent Receipt of DI and WC Benefits

Concurrent receipt period	Number of cases
Up to 1 month	936
1 month up to 6 months	13
6 months up to 1 year	15
1 year up to 2 years	17
2 years up to 3 years	12
3 years up to 5 years	13
5 years up to 7 years	6
Total	**1,012**

Source: GAO analysis of Virginia's WC data and SSA DI beneficiary data as of March 2000.

In response to the payment problems identified by the OIG and OQA, SSA has begun a complete review of more than 61,000 cases involving DI beneficiaries whose benefits are being offset for WC payments.[10] After completing 60 percent of the benefit reviews, SSA has found payment errors in 52 percent of the cases examined. Moreover, its review has shown that many beneficiaries fail to report changes in their WC benefits even when reporting would increase—often substantially—the amount of their DI benefits. Nearly 85 percent of the payment errors have been underpayments that occur when beneficiaries do not report the termination or reduction of their WC benefits. Among the reviewed cases, SSA has found more than 200 beneficiaries who were underpaid by at least $30,000 each over the course of their eligibility.

In addition to reconsidering its benefit payments in these cases, SSA has taken other actions to improve its administration of the WC offset, including sending mailers to remind beneficiaries to report changes in their WC benefits. The agency has also provided training on WC cases to its staff and revised its operating instructions. The agency is continuing a

[9]Because of the time that would be needed to assess whether any of these cases involved overpayments, we did not attempt to determine whether the offset would have applied in these cases.

[10]The cases being reviewed only cover beneficiaries who became entitled to benefits between 1966 and 1993. An SSA official told us that, in October 2001, the agency plans to begin reviewing the accuracy of payments made in WC offset cases for beneficiaries entitled to DI benefits after 1993.

long-time effort to obtain on-line access to the databases of state WC agencies to improve its ability to identify WC beneficiaries. However, despite nearly 2 decades of efforts, SSA has been able to obtain on-line access to state WC data in only eight states. Many states are unwilling or unable to cooperate, citing state privacy limitations on sharing the data, incompatible computer systems, or insufficient resources. Further, the benefits of accessing state records are limited because state records are not always comprehensive. For example, many states do not require data from self-insured employers about WC claims.

Payment errors resulting from self-reporting of WC benefits may also be a problem for the SSI program. Because periodic WC benefits are considered income and lump-sum payments are considered assets, they can also complicate the payment of SSI benefits. The SSI program is the nation's largest cash assistance program for the poor. To be eligible for SSI, an individual or family must have income and assets below specified levels.[11] Although not all income and assets count toward eligibility decisions, periodic WC benefits are counted as income and lump-sum payments from a WC settlement would be considered an asset. Recently, we reported that as of 1999 SSI's accumulated overpayments totaled $3.8 billion.[12] Although the portion of this debt caused by WC payments has not been determined, a large part of the overpayment problem was caused by SSA's reliance on SSI recipients to report their financial circumstances (including the receipt of WC benefits) and the agency's insufficient verification of recipient income. Moreover, as in the DI program, underpayments could also result if SSI beneficiaries fail to report the reduction or termination of their WC benefits.

SSA Policies Allow Lump-Sum Settlements to Avoid the WC Offset

Because a lump-sum payment in a WC settlement is a substitute for future periodic payments, the Social Security Act requires SSA to determine the monthly benefit equivalent of the lump-sum payment so that SSA can determine whether the combination of monthly DI and WC benefits exceeds 80 percent of what the worker made at the time of injury.[13] The

[11]In calendar year 2001, the countable monthly income could not exceed $530 for a single adult or $796 for a couple, and assets could be no more than $2,000 for a single person or $3,000 for a couple.

[12]*Major Management Challenges and Program Risks: Social Security Administration* (GAO-01-261, Jan. 2001).

[13]SSA deducts medical, legal, and related expenses paid or incurred by a worker in connection with a WC claim for offset calculation purposes.

law requires SSA to closely approximate the amount of the WC benefit foregone by the acceptance of a lump-sum payment. SSA's policy and procedures specifies the use of one of three benefit rates in making this determination:

- The periodic benefit rate specified in a settlement agreement;
- If the agreement did not specify a benefit rate, the most recent monthly benefit rate that was paid before the settlement; or
- If neither of the first two rates was used, the maximum monthly benefit rate allowed by the WC program at the time of the injury.

Settlement agreements often specify a monthly benefit rate for a lump-sum payment. However, SSA procedures do not state how this monthly rate should be determined by the settlement parties or by SSA staff so that it is equivalent to the periodic value of the lump sum. In recent years, settlement agreements have calculated the benefit rate by evenly distributing the lump sum over the injured employee's remaining life expectancy. In doing so, settlements can usually state a monthly benefit well below the beneficiary's most recent WC monthly benefit rate or the maximum benefit rate under a WC program. This lower monthly benefit rate means that the chances of the combined DI and WC benefits exceeding 80 percent of preinjury income are greatly reduced and frequently eliminated, thereby preserving the injured worker's DI benefits.

For example, consider a case involving a $50,000 lump-sum payment in which a worker's preinjury earnings were $1,000 a month and the settlement agreement did not specify a monthly benefit rate. The worker could receive up to $800 in combined WC and DI benefits—80 percent of preinjury earnings—before the WC offset would apply. If the worker had been receiving a WC monthly benefit of $600 before a lump-sum settlement, SSA would use this amount in determining the offset. Thus, if the worker's DI benefit is $500, the combination of both benefits would be $1,100 per month, exceeding the $800 maximum by $300. Under this situation, SSA would reduce the DI benefit from $500 to $200 per month.

However, when a settlement does specify a monthly benefit rate, and does so based on remaining life expectancy, the rate is often low enough that the offset does not apply. For example, if the settlement in the above case specified that the worker's remaining life expectancy is 38.3 years (460 months), the monthly benefit rate for the payment stated in a settlement would be $108.70 ($50,000 divided by 460 months). In this case, combined WC and DI benefits would equal $608.70 a month ($108.70 plus the $500 DI

benefit). Because combined benefits are below $800, the worker's DI benefits would not be reduced.

Because calculating the monthly benefit rate based on life expectancy makes the monthly rate relatively low and thus reduces the chance that the WC offset will apply, it has been used intentionally for this purpose. We examined articles in various legal publications that discuss the use of life expectancy in settlements to avoid offset of their client's Social Security benefits. The articles caution attorneys practicing WC law that not knowing "how to structure the settlement so there would be little or no offset" exposes them to potential malpractice claims.[14]

Our review of Virginia cases involving persons receiving both DI and WC benefits showed that stating a benefit rate based on remaining life expectancy was relatively common and the WC offset was often avoided. From a sample of 139 cases, 76 percent (105) were resolved by a negotiated settlement with a lump-sum payment. In 37 percent (39) of the lump-sum cases, the settlement stated an award rate based on the person's remaining life expectancy.[15] In 46 percent (18) of the 39 cases, SSA did not offset DI benefits and in 41 percent (16 cases) SSA did offset DI benefits. In the remaining 13 percent (5 cases), SSA records did not indicate that SSA knew that the beneficiary received WC benefits.

The manner in which remaining life expectancy is being used to establish a monthly benefit rate for a lump-sum payment raises concerns because it does not account for the time value of money and does not calculate an equivalent benefit rate that consistently reflects benefits levels under state WC programs. In the end, the practice does not produce realistic monthly benefit equivalents.

[14]Sandra J. Perry and Thomas M. Henry, "Maximizing Workers Compensation Awards; Controlling Offset From Social Security Disability Payments," *Trial* (March 1994); Michael J. Walkup, "Social Security Offsets and Workers' Compensation Settlements," *Chicago Daily Law Bulletin* (July 8, 1992); and James D. Leach, "Minimizing the Workers Compensation Offset in Social Security Cases," *Practical Litigator* (July 1994).

[15]Because this and other percentage estimates resulting from our work are based on a sample, each estimate is subject to sampling error. The sampling error for this estimate is plus or minus 9.7 percentage points. This means that at the 95-percent confidence level, the true percentage is between 27.3 and 46.7. All other percentage estimates resulting from our sample have sampling errors of 14 percentage points or less.

First, this practice fails to recognize the time value of money. That is, a given amount of money received at one time, as in the case of a lump-sum payment, is of greater value to the recipient than the same amount of money received in a series of payments spread over a future period. The value is greater because the recipient can invest the lump-sum payment and earn a return on it. Those who argue that the value of a lump-sum settlement is equal to a series of payments that would total the amount of the lump sum ignore the additional value that results from the investment opportunities provided by the lump-sum form of payment. Depending on the investment's return rates and duration, significant differences in the estimated monthly benefit amounts are derived by considering the time value of money rather than the current practices that ignore it.

For a hypothetical lump-sum payment of $50,000, table 2 compares the level of monthly benefit amounts implicit under the current approach (derived by dividing the lump-sum payment by the number of expected months of remaining life), which assumes the money is not invested, to the monthly withdrawal amount possible under each of several alternative investment rates of return.[16] For example, given a 6 percent return on investment, $276.65 can be withdrawn at the beginning of every month for 38.3 years on a $50,000 lump-sum investment. This is about 155 percent higher than the $108.70 amount that assumes no investment.

Table 2: Estimated Monthly Benefit Amounts Under the Current Approach Versus Monthly Amounts if Invested at Various Rates of Return

Rate of return	Estimated monthly benefit amount[a]		Difference in monthly benefit amounts
	Current approach (ignores time value of money)	Approach that considers time value of money	*
5.0	$108.70	$243.42	$134.72
5.5	108.70	259.83	151.13
6.0	108.70	276.65	167.95
6.5	108.70	293.86	185.16
7.0	108.70	311.42	202.72
7.5	108.70	329.30	220.60

[a]Estimates are based on a $50,000 lump-sum payment expected to last for 38.3 years (460 months).

[16]The rates of return shown in the analysis reflect nominal rates of return that might be expected from relatively conservative investments in long-term bonds rather than higher-risk investments in stocks.

Second, the unrestricted use of life expectancy to establish a monthly benefit rate for a lump-sum payment often does not reflect how long WC benefits would have been received if the injured worker had not elected to receive a lump-sum payment. Advocates for injured workers argue that, because their impairments are permanent and preclude future earnings, it is reasonable to calculate the periodic benefit rate over their remaining life expectancy. However, this use of life expectancy may be inconsistent with the benefit payment periods established under state WC laws. While states allow for the payment of WC benefits for the duration of a disability, this is usually associated with impairments that are considered to be permanent and total in character. These types of cases account for about 1 percent of all WC cases. In contrast, permanent partial impairments are the type of WC cases most often disputed and closed by a lump-sum settlement and account for about 30 percent of WC cases.[17] In permanent partial impairment cases, the negotiated lump-sum payment is based mostly on the need to pay WC benefits for only a limited period of time, not the person's remaining life expectancy. For example, a Department of Labor report shows that 35 state WC programs limit the time that cash benefits are payable for permanent partial disability cases.

Finally, in many cases, the use of remaining life expectancy results in unrealistically low estimates of monthly benefit amounts foregone, well below the minimum monthly benefit established by a WC program. We found that the benefit amounts specified in the 39 Virginia settlements that used remaining life expectancy to calculate a benefit rate were indeed very low and would not provide any meaningful lifetime economic security for disabled workers. For example, 54 percent (21 of the 39 cases) stated a monthly benefit rate for a lump-sum payment that was less than $100 per month. The amounts in these cases are well below the minimum monthly benefit levels established by the Virginia WC program, which, depending on the year of WC settlement for cases in our sample, ranged from $418 to $606 per month.

For some time, SSA had been concerned about the practice of basing WC benefit rates for lump-sum payments on a beneficiary's remaining life expectancy. In 1997, SSA proposed requiring that the periodic benefit amount specified in a settlement had to be based "on the percentage of the worker's average weekly wage required by state law." Because this

[17] *Workers' Compensation: Benefits, Coverage, and Costs, 1997-1998 New Estimates*, National Academy of Social Insurance (May 2000).

phrasing is ambiguous, we asked SSA staff to elaborate. They explained that this change was intended to prevent the use of remaining life expectancy to establish a monthly benefit rate. As such, the staff said it would require the use of either the last WC benefit amount paid or the maximum WC benefit amount payable under the WC program.

SSA's proposal drew numerous negative comments when it was published in the *Federal Register*. One of the major arguments raised by opponents was that the offset was unfair to the working poor because they are disproportionately affected by it. Persons with high average current earnings will not have their DI benefits reduced when their earnings are so high that even maximum DI and WC benefits fall below 80 percent of their earnings. However, this fairness issue can also be looked at from another perspective. If the lower-income worker faces a reduction in DI benefits, it is because he or she is receiving combined benefits that exceed 80 percent of his or her preinjury average earnings. In comparison, the combined WC and DI income of a disabled worker with high average preinjury earnings may result in a replacement rate well below 80 percent. Nevertheless, because of substantial opposition, SSA dropped its proposed change and continues to accept the use of remaining life expectancy as a basis for determining the monthly payment amount.

Lack of WC Information Hinders Administration of Other Programs

Other federal agencies also need WC information to effectively administer their programs. For example, HCFA relies on Medicare beneficiaries to report the receipt of their WC benefits. Other programs, such as Food Stamps and Section 8 Rental Voucher and Certificate Programs, need income data to determine eligibility and benefit amounts. Like SSA, each of these programs is vulnerable to payment problems caused by an inability to reliably identify beneficiaries receiving WC benefits. In addition, child support enforcement agencies can use WC information to locate missing parents and uncover assets to meet support obligations.

Lack of WC Information Makes HCFA Vulnerable to Medicare Payment Errors

Medicare provides health insurance to people who are 65 or older, have received Social Security DI benefits for 2 years (regardless of age), or have end-stage kidney disease.[18] The Social Security Act precludes Medicare from paying medical expenses covered under a WC program. Under WC programs, the employer or insurance carrier is the primary payer of medical expenses related to the injury/illness, and Medicare is a secondary payer. Medicare only pays medical expenses for a work-related injury if a WC program does not, there is no other primary payer, and the needed treatment is covered by Medicare. To properly implement this secondary-payer requirement, HCFA must know whether a Medicare beneficiary receives workers' compensation. Although SSA informs HCFA when persons become eligible for Medicare benefits, it does not pass along information it may have on whether these beneficiaries are or may be receiving workers' compensation.[19]

Like SSA, HCFA primarily relies on its beneficiaries to report their WC benefits. To identify persons receiving WC benefits, HCFA sends a questionnaire to all newly eligible beneficiaries that asks whether the new beneficiary is receiving medical services for a work-related injury or illness and whether he/she has filed or will file a claim for workers' compensation. HCFA officials told us that about 78 percent of the newly enrolled beneficiaries respond to its questionnaire. HCFA also relies on medical service providers who treat patients and on its intermediaries and carriers to provide information that would identify persons receiving WC benefits.

WC cases that are closed by negotiated settlements are a particular concern for HCFA because the terms of the settlements can place limits on the amount of future medical expenses for which a WC insurer is responsible. By regulation, HCFA will not recognize WC settlements that appear to shift responsibility for paying medical expenses related to a WC covered injury from the insurer to the Medicare program. HCFA

[18]Medicare has two parts. Hospital insurance (Part A) helps pay for inpatient care, up to 100 days of skilled nursing facility care, home health care, and hospice services. Medical insurance (Part B) helps pay for a wide range of services such as physician services, laboratory services, medical equipment, and outpatient hospital services. HCFA contracts with insurance companies to examine and pay Medicare claims and ensure the accuracy of payments under Part A and Part B.

[19]SSA provides HCFA a listing that identifies each eligible person's name, Social Security number, date of birth, address, gender, and whether the individual elected to enroll in the optional Part B coverage, including persons who qualify by virtue of receiving DI benefits.

regulations require settlements to give reasonable recognition to both cash benefits and future medical expenses that are provided under WC programs. If a settlement does not designate a portion of the lump sum for future medical expenses, HCFA can determine the amount of the lump sum that should have been set aside for future medical expenses and it can seek that amount from the worker. A HCFA official said that settlements must be examined on a case-by-case basis relative to the injury, and settlements should usually make some provision for future medical expenses.

Without knowing whether a person is receiving WC benefits, HCFA is vulnerable to paying for medical expenses related to the WC injury or illness. We used our sample of 139 joint DI and WC beneficiaries from Virginia to evaluate HCFA's awareness of WC benefits and whether its reliance on self-reporting made it vulnerable to Medicare payment errors. From our sample of 139 beneficiaries, 78 percent (108) persons were enrolled in Medicare. Of those enrolled, 83 percent (90) had closed their WC claims through settlements. In these 90 settled cases, 40 percent (36 persons) fully waived their WC coverage of future medical expenses, designating no money from the lump sum to cover future medical expenses and ending the insurer's liability for covering future medical expenses. In the remaining 60 percent (54 cases), some provision was made for future medical expenses, often covering related medical expenses for short periods of time after the settlement, typically 6 to 12 months. Given that HCFA regulations state that WC settlements need to satisfy Medicare's interests relative to the payment of future medical expenses, we examined the Virginia WC files for our sample cases to determine whether there was any indication that the parties sought HCFA's approval of the settlement terms. Our WC case file review did not find any evidence that the parties to the WC settlement advised HCFA of the terms of the settlement or sought its input on their acceptability.

To further consider HCFA's awareness of beneficiary's receiving WC benefits, we asked Medicare to provide any WC information it had on the persons in our sample. Because HCFA had to manually search its records, it limited the search to no more than 2 dozen persons in our sample. We selected a nonrandom sample of 24 WC cases covering persons who were enrolled in Medicare and who had received Medicare Part A benefits. HCFA officials provided information indicating it knew 8 of the 24 beneficiaries had received WC benefits. In the remaining 16 cases, it did not know the Medicare beneficiary had received WC benefits.

To consider HCFA's vulnerability to payment errors, we examined the 108 persons in our Virginia sample who were enrolled in Medicare and their associated Medicare-paid claims for inpatient services. We compared the principal diagnoses listed on the Medicare claims with the WC injuries incurred. This comparison allowed us to identify Medicare payments for services that were potentially related to the WC injury.[20] Of the 108 Medicare enrollees in our sample, we found that 64 percent (69 persons) received medical treatment paid for by Medicare. In 39 percent of these cases (27 of the 69 persons), we also found that Medicare had paid for services potentially related to WC injuries. Although these data are not nationally representative and do not prove that payment errors occurred, they show that HCFA faces difficulties similar to SSA in identifying WC beneficiaries and may be paying for services that it should not cover.

HCFA officials have estimated that about 8 percent of its beneficiaries have medical claims that may be the responsibility of another health insurer, liability insurer, or WC program. In a recent GAO report about actions that could improve HCFA's identification and collection of overpayments, we discussed the difficulty HCFA faces trying to identify Medicare secondary-payer-related overpayments. We noted that commercial insurers share information on their policyholders to identify beneficiaries having more than one source of medical insurance so that they can coordinate their benefit payments. However, because Medicare is generally the secondary payer to other insurers, it may not be in other insurers' economic interests to share their beneficiary data with HCFA. Indeed, while HCFA has attempted to arrange for voluntary data sharing with other medical insurers, few have opted to participate, thereby reducing HCFA's ability to identify claims that are the responsibility of another insurer. In the report, we suggested that the Congress consider requiring all private health insurers to comply with HCFA requests for the names and identifying information of their enrolled beneficiaries.[21]

[20] To be potentially related to a WC injury, a medical diagnosis for a Medicare benefit claim had to be closely associated with the injury described in the WC case file. For example, if the WC file we examined cited a back injury, then we considered claims for medical expenses related to back or spinal conditions and subsequent to the date of the injury to be potentially related to a WC injury.

[21] *Medicare: HCFA Could Do More to Identify and Collect Overpayments* (GAO/HEHS/AIMD-00-304, Sep. 2000).

Lack of WC Information Could Affect Other Program Operations

Other federal programs, including Food Stamps, Section 8 Rental Voucher and Certificate Programs, and child support enforcement, also need information about the receipt of WC benefits by their program applicants and participants to effectively administer their operations.[22] For example, USDA's Food Stamp program assists qualified recipients in purchasing groceries. To qualify for food stamps, beneficiaries' incomes and assets must not exceed program limits. Under USDA's regulations, workers' compensation is considered a form of income so managers need to know when food stamp applicants and beneficiaries receive it. Although we did not specifically examine how WC benefits affect the Food Stamp program, we reported in 1999 that millions of dollars of overpayments in the Food Stamp program occur because agencies don't have reliable information to determine the eligibility of applicants and recipients.[23]

In addition, the Section 8 Rental Voucher and Certificate Programs need information about WC benefits. Funded by HUD, these programs are the main form of housing assistance for low-income tenants. Residents in units subsidized by these programs generally pay 30 percent of their income for rent and HUD pays the balance. Under HUD regulations, applicants must report their WC benefits because they are counted as a source of annual income when making eligibility and benefit-level determinations. In a 1999 report, we stated that high levels of improper payments exist in these programs because HUD does not have adequate internal controls to verify tenants' self-reported income.[24] Although the HUD Inspector General did not specifically identify WC benefits, she has also stated that tenants often do not report income, or underreport it, causing overpayments of HUD subsidies.[25]

[22]Because this is not a comprehensive list, some programs not mentioned here may also benefit from being able to better identify WC beneficiaries.

[23]See *Major Management Challenges and Program Risks: Department of Agriculture* (GAO/OCG-99-2, Jan. 1999). In a January 2001 report, we reemphasized the need for the department to continually address and minimize the amount of fraud and abuse in Food and Nutrition Service programs, citing the Food Stamp program where over $1 billion in overpayments were made in 1999. See *Major Management Challenges and Program Risks: Department of Agriculture* (GAO-01-242, Jan. 2001).

[24]See *Major Management Challenges and Program Risks: Department of Housing and Urban Development* (GAO/OCG-99-8, Jan. 1999). In 2001, we again cited the Section 8 Rental Voucher Program as a high-risk federal program. See *Major Management Challenges and Program Risks: Department of Housing and Urban Development* (GAO-01-248, Jan. 2001).

[25]Report transmitting the audit of the HUD financial statements as of Sep. 30, 1999, 00-FO-177-0003 (Feb. 23, 2000).

Finally, we also found that more reliable WC data would assist efforts to locate missing parents and uncover assets that could pay child support obligations. To help locate missing parents, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required the states to submit data on newly hired employees, as well as quarterly data on wages and unemployment insurance that most employers must file with the state each quarter. Data on WC beneficiaries are not included in the reports that the national Office of Child Support Enforcement uses to assist state enforcement agencies in locating missing parents and identifying possible sources of income to meet their support obligations. However, we found that 26 states use WC information in their enforcement activities.[26] These states said they matched information in their state WC records to locate missing parents and the match helped to increase child support collections. One state agency told us that they strongly recommend such matching because it often identifies persons in construction and seasonal work who move around and can otherwise be difficult to locate.

Options for Improving Access to Workers' Compensation Information

Because of the fragmented structure of WC programs and the lack of direct federal involvement in state WC programs, developing a reliable source of information to identify WC beneficiaries for federal agencies defies a simple solution. While SSA has been working with state WC agencies to improve its access to WC benefit data and to improve its internal processes, additional actions that might assist SSA and other agencies to obtain better data on beneficiaries receiving workers' compensation could be explored. For example, because SSA and HCFA independently develop information on their beneficiaries who also receive WC benefits, exchanging information between these agencies might prove fruitful. As noted earlier, we found situations in which SSA knew of a person's receipt of WC benefits and HCFA did not. At the same time, administrators of other federal benefit programs might also benefit from this information. Like SSA and HCFA, they too need to know when beneficiaries receive WC benefits.

Another possible effort would involve periodically obtaining information about WC benefit payments directly from entities that pay WC benefits and recording that information in a central database. WC benefit payers—

[26]Forty-seven child support enforcement agencies responded to a questionnaire we sent to all the states and the District of Columbia asking whether they used WC data to locate missing parents and identify income to meet existing support obligations.

insurance companies, self-insured employers, and state insurance funds—are the best source of information about WC beneficiaries and their benefits. Benefit payers know to whom, when, how much, and why they are paying benefits. The reporting process would provide SSA with information that identifies WC beneficiaries (for example, names, Social Security numbers (SSN), dates of birth, and addresses) for a reporting period. With this type of information, SSA and other authorized federal program managers could compare their application and payment files with the central registry to determine whether they needed to investigate eligibility decisions or the amount of a beneficiary's payment.

While such reporting could provide independent WC information, doing so on a voluntary basis presents operational difficulties. Probably foremost among these difficulties is obtaining the cooperation of about 5,000 WC benefit payers. While they are sympathetic to the needs of federal agencies to properly steward federal benefit payments, insurance industry trade associations indicated to us that WC insurers have little to gain by sharing WC beneficiary information with the government, especially if it involves reporting information about all WC beneficiaries. They said that a reporting system covering every person receiving WC benefits in a specific reporting period would be excessive because most WC cases involve temporary absences from work or payments for medical expenses only. These types of cases are unlikely to result in persons qualifying for federal program benefits because the injured workers return to work. Consequently, reporting information about all WC benefit cases would be unnecessarily burdensome and raise privacy issues. One official said that any reporting process should focus on cases involving permanent injuries—that is, cases in which cash benefits have been paid for a long period of time, perhaps 1 or 2 years.

To encourage participation in a voluntary reporting system, it would be beneficial to provide WC insurers with an incentive to participate. Insurers are concerned about fraud and abuse in WC programs. During our review, we learned that WC insurers might be interested in validating the identities (names and SSNs) used by their beneficiaries. SSA maintains a registry of the persons to whom it has issued an SSN. Given this potential interest, it might be possible to develop a voluntary WC beneficiary reporting process whereby WC benefit payers would periodically identify persons to whom they have paid either significant amounts of WC benefits or made payments for significant periods of time. In exchange, SSA could validate the name and SSNs being used by the beneficiaries of participating WC insurers.

Although SSA does not validate identities for WC insurers, SSA provides a similar type of service to employers through its Employee Verification Service (EVS). Under EVS, employers and third parties (accountants, tax filing services, etc.) are encouraged by SSA to send the names and SSNs of their employees to SSA at any time throughout the year. SSA then matches the submitted name and SSN data to its records to identify whether the queried name and SSN match and the combination is a valid identifier. SSA established EVS to improve benefit calculations in its retirement, survivor, and disability benefit programs. Social Security benefit amounts are based on a person's average earnings. To assure that workers receive accurate benefit payments, SSA records each person's annual earnings to their account (identified by name and SSN).

Because SSA can validate employees' names and SSNs and reduce employers' wage report processing costs, it may be possible for SSA to validate the beneficiary names and SSNs for WC insurers who agree to voluntarily exchange information that identifies their WC beneficiaries. Whether every WC insurer would voluntarily participate in a reporting system even with an incentive is unknown. If SSA could use EVS for this purpose, however, it could pilot test such an approach to gauge WC insurer interest, and the benefits and costs of such a system.

If a satisfactory voluntary reporting process to identify WC beneficiaries cannot be established, WC benefit payers could be required to provide information. A mandatory reporting requirement could be established, perhaps by requiring WC insurers to identify beneficiaries as part of the new hire reporting process previously discussed. This action would require legislation.

Conclusions

For years, federal agencies have relied on beneficiaries to report their receipt of WC benefits. Self-reporting has not been an entirely effective practice and SSA's experience demonstrates that program beneficiaries often do not report their WC benefits even when it is in their own interest to do so. Moreover, federal agencies cannot provide proper stewardship over federal expenditures and assure that persons receive the benefits to which they are entitled in matters related to WC benefits without a reliable source of information to identify WC beneficiaries.

Several options exist to improve the management of federal programs relative to identifying WC beneficiaries. SSA, HCFA, and other federal agencies can test ways to share information about beneficiaries who are or may be receiving workers' compensation. Although the data these

agencies have on workers compensation are limited, such a test would determine whether a full exchange of WC beneficiary information among agencies might be beneficial to the government as a whole. In addition, SSA's policies governing the conversion of lump-sum payments into monthly amounts should be revised to be consistent with the benefit payment amount and timeframes of the individual programs. Its policies need to recognize that the programs establish minimum benefit levels and often limit the length of time that WC benefits are payable. They should also require that benefit rates stated in settlements recognize the time value of money. These changes should allow SSA to more closely approximate the monthly benefit amount of a lump-sum payment.

For comprehensive reform, however, SSA and other agencies periodically need information from WC insurers that identifies beneficiaries who may qualify for federal benefits. Any reporting process that is developed should be centralized in a single agency, such as SSA, which can share that information with other authorized users. Such a reporting process would also seek to minimize burdens for insurers and ensure the privacy interests of WC beneficiaries. Ideally, SSA should explore with WC insurers whether a viable voluntary system can be created. However, if a viable voluntary reporting process is not feasible, congressional action to mandate the reporting of WC beneficiary information will be needed to improve the accuracy of federal benefit payments.

Recommendations for Executive Action

To improve current operations related to WC information needs, we recommend that the Commissioner of Social Security and the Administrator of the Health Care Financing Administration test the extent to which sharing information that identifies persons who are or may be receiving WC benefits improves the accuracy of their benefit payments. If sharing this type of information is cost effective, further tests to similarly evaluate the costs and benefits of sharing WC information with other federal agencies needing WC information should be conducted.

We also recommend that the Commissioner of Social Security ensure that the following actions are taken to improve administration of the WC offset provision:

- SSA officials should meet with representatives from the WC insurance industry to determine whether a viable voluntary reporting process can be established that would provide the government with information that periodically identifies WC beneficiaries.

- SSA should revise its policies and procedures governing the establishment of monthly benefit amounts stated in settlements for lump-sum payments. At a minimum, the regulations should require that estimates of the monthly benefit amounts consider the time value of money and the minimum payment amounts under state law. In addition, the appropriate amortization period for determining the monthly benefit amount should be consistent with benefit payment requirements under state WC program rules.

Matters for Congressional Consideration

If SSA is unable to establish a viable voluntary WC beneficiary reporting process with WC insurers, the Congress should consider establishing a periodic reporting requirement that provides the federal government with information that identifies WC beneficiaries. This information should be reported by WC insurers to a single federal agency authorized to use those data for its own administrative purposes and to share the information with other agencies needing it to meet their statutory obligations. Any system that is established should include features to prevent improper disclosure of that information and should restrict access to authorized purposes only.

Agency Comments and GAO's Response

We provided a draft of this report to SSA and HCFA. In commenting on this report, SSA and HCFA generally supported our recommendation to share information with one another to identify recipients of WC benefits. Concerning our recommendation that SSA determine the viability of a voluntary reporting process with WC insurers to provide the government with information that identifies WC beneficiaries, HCFA noted that voluntary reporting of information is always the preferred method of doing business. However, HCFA noted that it had previously supported a related, but more broadly stated, recommendation in an earlier GAO report stating that the Congress should consider requiring all private health insurers to comply with HCFA requests for the names and identifying information of their enrolled beneficiaries.[27]

SSA generally agreed that it needs to improve its administration of the WC offset provisions. Regarding our recommendation that SSA revise its policies and procedures governing lump-sum payments in settlement agreements, SSA stated that it recognizes the need to standardize its current policies and procedures for prorating WC lump-sum settlements and said that it will step up its efforts to improve the standard by which to

[27] *Medicare: HCFA Could Do More to Identify and Collect Overpayments* (GAO/HEHS/AIMD-00-304, Sep. 7, 2000).

prorate lump-sum settlements. With regard to our other recommendations, SSA raised several issues and concerns.

SSA noted that an SSA-HCFA data exchange would not provide all of the information that either SSA or HCFA needs to make accurate benefit payments. In addition, SSA also raised some concerns about our suggestion to provide SSN verification services to WC insurers. SSA stated that such verification would create a substantial additional workload for SSA and could require legislation to conform to the Social Security Act and Privacy Act.

SSA also raised concerns about the effectiveness of computer matching versus on-line access to obtain better WC information. SSA stated that it is currently developing an SSA-wide policy for future data exchanges and is also evaluating the effectiveness of its computer matching activities. Moreover, SSA stated that it needs to complete a full analysis of states' WC reporting practices and the identification of the largest WC insurers in the United States before committing to providing information to private entities or to any particular method (computer matching or on-line access) of obtaining WC data. And finally, SSA expressed concern that the administrative resources expended to obtain better WC information, including the systems costs for setting up the data exchanges recommended in our report, would be significant. The agency also noted that program costs are also likely to increase since most payment errors are underpayments.

We recognize and agree with SSA that a data exchange with HCFA would not provide sufficient information for either agency to make accurate benefit payments. Rather, we believe that this comparison of records could identify DI and Medicare beneficiaries receiving WC benefits of whom SSA and HCFA may have no previous knowledge. The agencies could then use this information as an indicator that further examination of a case or claim is warranted.

With regard to SSA's concerns about expanding SSN verification, SSA already provides verification services to several WC state programs. Moreover, because the EVS is already offered to millions of employers, including WC insurers in their role as employers, it is questionable whether this would substantially increase SSA's workload in this area. In addition, such verification could significantly improve the accuracy of payments in DI cases that have long been prone to error. We agree that expanding the verification system requires SSA's careful consideration, including whether it could be done under current law or whether additional legislation would be required. However, as we have pointed out

in an earlier report on data sharing, the objective of improving program efficiency and integrity can be compatible with the objective of individual privacy and it is possible to improve access to important data sources in a manner that is consistent with protections in the Privacy Act.[28] Any verification system that is established should include features to prevent the improper disclosure of the information being verified and should restrict access to authorized purposes only.

Regarding SSA's concerns about the effectiveness of computer matching versus on-line access to obtain better WC information, we agree that it is appropriate for SSA to proceed cautiously in an area as complex as workers' compensation. However, as we noted earlier in the report, despite nearly 2 decades of effort, SSA has been able to obtain on-line access to state WC data in only eight states. Even if SSA could gain the cooperation of more states, the benefits of accessing state records are likely to be severely limited in the many states that do not require data about WC claims from self-insured employers.

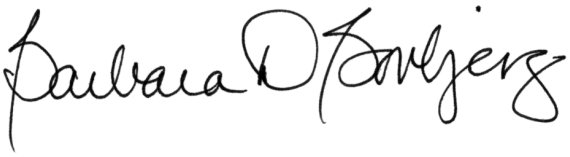
Finally, with regard to SSA's concerns about increases in administrative resources and program expenditures that are likely to result from obtaining better WC information, we believe that protecting program integrity is worth some additional spending on administrative resources to correct payment errors. Moreover, since most of these payment errors are underpayments, the additional program expenditures resulting from such corrections would be made to beneficiaries who are entitled to such benefits but are not currently receiving them.

SSA also provided a few technical comments, which we incorporated where appropriate. SSA's and HCFA's comments are printed in appendixes II and III.

Copies of this report are being sent to the federal agencies administering programs that need WC information and to state agencies that administer WC programs. We will make copies available to other interested parties on

[28] *Benefit and Loan Programs: Improved Data Sharing Could Enhance Program Integrity* (GAO/HEHS-00-119, Sep. 13, 2000).

request. If you or your staff have any questions concerning this report please call me or Carol Dawn Petersen on (202) 512-7215. Other major contributors to this report are William Staab, Gerard Grant, and Jill Yost.



Barbara D. Bovbjerg
Director, Education, Workforce,
and Income Security Issues

Appendix I: Scope and Methods

Analysis of the Social Security Administration's Implementation of the Workers' Compensation Offset

To examine the Social Security Administration's (SSA) implementation of the workers' compensation (WC) offset provision, we reviewed the offset requirement in the Social Security Act and SSA's implementing regulations and program operating procedures. To obtain a perspective on the operation of WC programs, we reviewed reports prepared by the Office of Workers Compensation Programs in the U. S. Department of Labor, the National Academy of Social Insurance, and the U.S. Chamber of Commerce, and spoke to an official of the International Association of Industrial Boards and Commissions. We examined numerous rulings by federal courts and administrative law judges related to SSA's policies for implementing the WC offset provision. We reviewed reports from GAO, from SSA's Office of Inspector General (OIG), and other SSA reports about the administration of the WC offset provision and met with SSA staff responsible for policy and operational aspects. We met with state WC agency officials in California, Tennessee, Maryland, Virginia, and Pennsylvania and contacted WC officials in Michigan, Illinois, Texas, North Carolina, Washington, and Alabama to discuss their WC programs and the availability of WC benefit data with which to compare to SSA benefit data. We also met with private attorneys representing WC insurers, injured workers, and Social Security Disability Insurance (DI) beneficiaries, and with several WC judges/adjudicators. Finally, we met with officials from the American Insurance Association and UWC, Inc.-Strategic Services on Unemployment and Workers' Compensation—two trade associations representing WC insurers.

To identify persons simultaneously entitled to both DI and WC benefits and to assess SSA's awareness of WC benefits among its DI beneficiaries, we compared WC beneficiary data from Virginia for 1995 and 1996 to SSA's master beneficiary records. We used data from Virginia because it maintains a central database on all WC cases and provided us with access to its data. The match identified 4,376 persons receiving DI and WC benefits. In 495 cases, however, certain dates needed to determine whether DI and WC benefits were simultaneously received were missing. Thus, we only were able to identify 3,881 simultaneous DI and WC beneficiaries. We did not match beneficiaries of federally administered WC programs, such as Black Lung, because SSA was either already making such a match or had plans to begin this matching.

To evaluate the treatment of lump-sum payments in WC cases for offset purposes, we randomly selected 150 cases from Virginia for detailed analysis. Our sample was drawn from a population of 4,376 cases in which WC benefits were paid to persons receiving DI benefits. The purpose of

our sample was to identify the proportion of these dual benefit cases that were closed through lump-sum settlements and how the lump sum payment was described in the settlement for WC offset purposes. The Virginia WC Commission was able to readily locate the case files for 139 of the 150 cases in our sample.

Analysis of Effects of WC Benefits on Medicare and Other Federal Agencies

To examine Medicare's administration of the secondary payer provision in the Social Security Act relative to workers' compensation, we reviewed pertinent regulations and procedures and met with HCFA policy and operations officials. We also met with attorneys who represent insurers and injured workers as well as state WC officials to discuss how Medicare benefits affect WC settlement decisions. We also used our sample of 139 Virginia WC cases to assess Medicare's vulnerability to payment errors. From the sample, we identified the dates when Medicare beneficiaries were injured at work; the type of injury incurred; and, if the cases were settled, whether any type of coverage for future medical expenses was provided under the settlement. We then examined Medicare enrollment and claim data for the years 1991 to 1999 for the sampled cases to determine (1) how many of the WC beneficiaries were enrolled in Medicare, (2) how many of the enrolled beneficiaries received benefits under Part A, and (3) whether the medical treatments that Medicare covered were potentially related to the WC injury.

We also asked HCFA staff if they would examine their databases and provide us with any information showing their knowledge of WC benefits for each Medicare beneficiary in our sample. Because this would require a case-by-case review, they agreed to examine 2 dozen cases. We selected 24 cases of persons who were enrolled for Medicare and had received Medicare benefits for treatments that were potentially related to their work-related injury.

To determine how workers' compensation affects payments under other federal programs, we reviewed pertinent program regulations and past GAO and OIG reports related to payment practices for these programs. In addition, we sent a questionnaire to child support enforcement programs in each of the 50 states and the District of Columbia to obtain information about how WC benefit information is used to locate missing parents and their assets. We received 47 responses.

Appendix II: Comments From the Social Security Administration

SOCIAL SECURITY
Office of the Commissioner
April 18, 2001

Ms. Barbara D. Bovbjerg
Director, Education, Workforce, and
Income Security Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to review the draft report, "Workers Compensation: Action Needed to Reduce Payment Errors in Social Security Disability and Other Programs" (GAO-01-367). Our comments on your report are enclosed. If you have any questions, please have your staff contact Odessa J. Woods at (410) 965-0378.

Sincerely,

Larry G. Massanari
Acting Commissioner
of Social Security

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE MD 21235-0001

COMMENTS ON THE GENERAL ACCOUNTING OFFICE (GAO) DRAFT REPORT, "WORKERS COMPENSATION: ACTION NEEDED TO REDUCE PAYMENT ERRORS IN SOCIAL SECURITY DISABILITY AND OTHER PROGRAMS" (GAO-01-367)

We appreciate and agree with recognizing the importance of safeguarding personal privacy, and the fact that data sharing is always a difficult balance of privacy and production. We are pleased to see that GAO acknowledges the difficulties SSA has encountered in trying to enforce section 224 of the Social Security Act regarding Workers' Compensation (WC) offset and that there are no simple solutions.

We offer the following comments on the recommendations.

Recommendation 1

The Commissioner of Social Security and Administrator of the Health Care Financing Administration (HCFA) test the extent to which the sharing of information with each other that identifies persons who are or may be receiving WC benefits improves the accuracy of their benefit payments. If sharing this type of information is cost effective, further tests to similarly evaluate the costs and benefits of sharing WC information with other federal agencies needing WC information should be conducted.

SSA Comment

We support the sharing of WC information with HCFA to the extent that such data sharing would improve program integrity. In the past, we held discussions with HCFA for this purpose, but at that time the technology for this interchange was not advanced enough to permit any sharing. Once the next release of Title 2 Redesign is placed into production later this year, more historical WC information will become available for both SSA and HCFA to consider. However, whether an automated exchange of WC data is feasible is an open question. If such an exchange is possible, it is not expected that this data will provide all the WC information that HCFA needs to determine if it should be either the primary or secondary payer of Medicare claims. Moreover, it is not expected that the data from the HCFA match will provide SSA with sufficient WC information to fully adjudicate a disability claim involving WC.

While the exchange of data between SSA and HCFA may identify WC cases not presently known, SSA still will need to use staff resources to do additional work on each and every claim identified. This includes actions such as retrieving and reviewing the disability claim record, developing and verifying the WC information, and adjudicating or readjudicating each disability claim, as needed. Similar actions would be needed by HCFA, as well, on each health insurance claim.

However, any data sharing must be done subject to existing laws and regulations relating to disclosure. We have a liaison established with HCFA and already have information exchanges for other Medicare issues. There are currently several important issues that we

need to discuss with HCFA on data exchange issues. We are scheduling a meeting with HCFA to discuss those issues and will add the WC subject to the agenda.

Recommendation 2

That the Commissioner of Social Security takes the following actions to improve its administration of the WC offset provision.

Meet with representatives from the WC insurance industry to determine whether a viable voluntary reporting process can be established that would provide the government with information that periodically identifies WC beneficiaries.

SSA Comment

SSA is currently conducting a computer matching operation with WC information from Texas, the State with the third highest WC rate. In June, we plan to match the Texas WC data against the title II master beneficiary records (MBR), send alerts to SSA's program service centers to take appropriate action to adjust title II payments, and then, begin the analysis of how many cases there are and how effective this process will be for other States. In addition, a matching agreement between SSA and the Department of Labor that compares Federal employees receiving WC to SSA's title II MBR data is expected to produce useful data this summer. The analysis from these matches will form the basis for additional discussions on obtaining WC information.

The report's suggestion that SSA consider providing Social Security number (SSN) verification services to private insurance carriers as an incentive to those carriers to provide information to SSA is problematic. There would be hundreds, if not thousands, of private companies that would be involved creating a substantial workload for SSA. More importantly, this would greatly expand SSN verification. We have historically limited SSN verifications to adhere to both the Privacy Act and the Social Security Act. Expanding SSN verification in this manner requires careful Agency consideration, and perhaps legislation, before it is undertaken.

SSA is currently developing an SSA-wide policy for future data exchanges, and is also evaluating the effectiveness of our overall computer matching activities. SSA's long-range plans include future systems enhancements that will provide electronic access to information to verify certain entitlement factors. In support of these activities, we are developing a Statement of Work with the International Association of Industrial Accident Boards and Commissions (IAIABC) to research and develop the following two reports:

> WC reporting practices in the United States on individuals injured on the job and receiving WC benefits. The report will catalog each State's capability to capture indemnity claims filed and amounts of indemnity payments made to claimants. It will also describe other cash benefits payable that may or may not be recorded on each State's databases; e.g., vocational benefits, medical expenses, attorney fees, lump sum cash settlements or other related expenses.

Identification of the largest WC insurers. The report will identify information that can be used by SSA as leads in contacting States, State agencies and State insurers to obtain electronic verification of WC evidence.

If we are successful in awarding a contract for the above reports, we expect the reports to be completed in time to present them at the IAIABC Annual meeting in October 2001. SSA is committed to improving our performance in this area, but WC is extremely complicated. We strongly believe that we must complete a full analysis of these reports before we commit to provide information to private entities or to any particular way of getting electronic WC data (e.g., computer matches v. online access).

Recommendation 3

Revise SSA policies and procedures governing the establishment of monthly benefit amounts stated in a settlement for lump sum payments. At a minimum, the regulations should require that estimates of the monthly benefit amounts consider the time value of money and the minimum payment amounts under state law. In addition, the appropriate amortization period for determining the monthly benefit amount should be consistent with benefit payment requirements under the state WC program rules.

SSA Comment

SSA recognizes the need to standardize the current policy and procedures for prorating WC lump-sum settlements in all jurisdictions, and will step up its efforts to improve the standard by which to prorate lump-sum settlements. However, this is a sensitive issue with the public and resolution will require careful deliberation. SSA will continue to explore policy and procedural options to improve the standard by which to prorate lump-sum settlements.

Other Comments

Page 7, paragraph 2

The report incorrectly states in the second paragraph that "In 1999, SSA paid about $53 billion in benefits to 6.6 million disabled workers and their dependents." According to the Office of the Chief Actuary, about $51 billion in benefits were paid to 6.5 million disabled workers and their dependents in 1999. Total Disability Insurance expenditures were $53 billion, but this amount includes administrative expenses.

Although we have not yet developed a cost estimate for the recommendations cited in this report, we expect systems costs for setting-up the data interchanges would be significant. We do acknowledge, however, that the administrative resources expended to obtain WC information would result in some offset of administrative savings since there would be fewer incidences of underpayments and overpayments. It is also likely that there would be an increase in program costs since studies have shown that a majority of the payment errors are underpayments.

Pages 22-23

SSA has never proposed legislation to repeal the WC offset provision. The last three sentences of the first paragraph under "Options for Improving Access to Workers Compensation Information" should be deleted from the report.

Page 24

The report suggests that SSA consider providing Social Security number (SSN) verification services to insurance carriers as an incentive to those carriers to provide information to SSA. We believe this is problematic, as there would be hundreds if not thousands of private companies that could be involved creating a substantial workload for SSA. More importantly, this would greatly expand SSN verification. We have historically limited SSN verifications both to adhere to the Privacy Act and the Social Security Act.

Also, there is hesitation in the Congress to expand these functions. Current legislation pending in Congress would restrict the use of the SSN to Social Security purposes. To propose an expansion of SSN verification to private entities in an environment weighing further *restrictions* on SSN use seems unwise.

Appendix III: Comments From the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

Deputy Administrator
Washington, D.C. 20201

DATE: APR 13 2001

TO: Barbara D. Bovbjerg, Director
Education, Workforce, and Income Security Issues

FROM: Michael McMullan
Acting Deputy Administrator

SUBJECT: General Accounting Office (GAO) Draft Report: *Workers Compensation Action Needed to Reduce Payment Errors in Social Security Disability and Other Programs* (GAO-01-367)

Thank you for the opportunity to comment on the draft report. Although this report is primarily directed toward the Social Security Administration (SSA), there is one recommendation that SSA and the Health Care Financing Administration (HCFA) share available lists of individuals who are, or may be, receiving workers compensation (WC) benefits.

We concur with the recommendation that SSA and HCFA should explore ways to test the process of sharing information in order to identify persons who are, or may be, receiving WC benefits. We agree that a data exchange with SSA would be a useful mechanism to improve the accuracy of Federal benefit payments. However, since SSA relies on other methods for WC claims identification, we believe a greater emphasis should be placed on exploring ways to obtain a data exchange with the state WC programs. Presently, there is little incentive for the WC carriers to implement such a change. While requiring this exchange of data from the state WC programs may achieve the most efficient and effective identification of benefit payments, there appears to be no mechanism at this time to effect this type of data exchange.

We have asked our Coordinator of Benefits contractor to actively pursue the voluntary sharing of these data with WC boards. However, we believe there may be considerable hesitancy on the part of states to share these data due to several factors including cost, lack of resources, and concerns over data privacy.

Although the other recommendations pertain to SSA, we have previously supported the recommendation reiterated in this GAO report, that Congress support legislation that would require mandatory insurer reporting on WC cases and all other areas where private insurance may be primary to Medicare. We agree that, while voluntary reporting is always the preferred way of doing business, there may be a financial disincentive for insurers to share this information with HCFA or SSA.

Again, we agree that sharing current WC information with SSA will help improve our programs. We look forward to working with GAO on this and other issues.

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